

CENTER FOR DISABILITY ACCESS
Raymond Ballister Jr., Esq., SBN 111282
Russell Handy, Esq., SBN 195058
Amanda Seabock, Esq., SBN 289900
Zachary Best, Esq., SBN 166035
Elliott Montgomery, Esq., SBN 279451
Mail: 8033 Linda Vista Road, Suite 200
San Diego, CA 92111
(858) 375-7385; (888) 422-5191 fax
elliottm@potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Chris Langer,
Plaintiff,

v.

Russell Motorsports, Inc., a
California Corporation;
Defendants.

Case No. 2:21-cv-01763-WBS-AC

**First Amended Complaint for
Damages and Injunctive Relief
for Violations of:** American's with
Disabilities Act; Unruh Civil Rights
Act

Plaintiff Chris Langer ("Plaintiff") complains of Russell Motorsports, Inc., a California Corporation; ("Defendant"), and alleges as follows:

PARTIES:

1. Plaintiff is a disabled individual and a member of a protected class of persons under the Americans with Disabilities Act. Plaintiff is profoundly hard of hearing and needs closed captioning to consume audio content such as movies, videos or tutorials. Plaintiff is a California resident.

2. Defendant Russell Motorsports, Inc. ("Russell Motorsports, Inc.") owned or operated Placerville Speedway located in El Dorado County in

1 August 2021.

2 3. Defendant Russell Motorsports, Inc. ("Russell Motorsports, Inc.") owns
3 or operates Placerville Speedway located in El Dorado County currently.

4 4. Defendant Russell Motorsports, Inc. owns the Placerville Speedway
5 website, with a root domain of: <https://www.placervillespeedway.com/>, and
6 all related domains, sub-domains and/or content contained within it,
7 ("Website") in August 2021.

8 5. Defendant Russell Motorsports, Inc. owns the Website currently.

9 6. Plaintiff does not know the true names of Defendants, their business
10 capacities, their ownership connection to the property and business, or their
11 relative responsibilities in causing the access violations herein complained of,
12 and alleges a joint venture and common enterprise by all such Defendants.
13 Plaintiff is informed and believes that each of the Defendants herein, is
14 responsible in some capacity for the events herein alleged or is a necessary
15 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
16 the true names, capacities, connections, and responsibilities of the
17 Defendants are ascertained.

18
19 **JURISDICTION & VENUE:**

20 7. The Court has subject matter jurisdiction over the action pursuant to 28
21 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
22 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. ("ADA")

23 8. This court has supplemental jurisdiction over Plaintiff's non-federal
24 claims pursuant to 28 U.S.C. § 1367 because Plaintiff's Unruh claims are
25 formed from the same case and/or controversy and are related to Plaintiff's
26 ADA claims. A violation of the ADA is a violation of Unruh. (Cal. Code §51(f).

27 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b). Defendant
28 is subject to personal jurisdiction in this District due to its business contacts

1 with the District.

2
3 **FACTUAL ALLEGATIONS:**

4 10. Plaintiff is hard of hearing and is a member of a protected class under
5 the ADA.

6 11. Plaintiff relies on subtitles and closed captioning to hear audio in
7 recorded content.

8 12. Russell Motorsports, Inc. operates privileges, goods or services out of a
9 physical location in California. These services are open to the public, places of
10 public accommodation, and business establishments.

11 13. The Website is a nexus between Russell Motorsports, Inc. customers
12 and the terrestrial based privileges, goods or services offered by Russell
13 Motorsports, Inc.

14 14. Russell Motorsports, Inc. offers videos on its Website to induce
15 customers to purchase its goods or services. Websites and videos are some of
16 the facilities, privileges, or advantages offered by Defendants to patrons of
17 Russell Motorsports, Inc.

18 15. Plaintiff was a prospective customer who wished to access Defendant's
19 goods or services.

20 16. Plaintiff visited the Website in August 2021 to look for information
21 whether the Speedway had opened to the public.

22 17. When Plaintiff attempted to view video content on the Website, he
23 discovered that the videos lacked closed captioning, which made him unable
24 to fully understand and consume the contents of the videos.

25 18. Plaintiff experienced difficulty and discomfort in attempting to view
26 videos including: "March 27, 2021 Racing Highlights" and "Placerville
27 Commercial". As a result of this inaccessibility, he was deterred from further
28 use of the Website.

1 19. Despite multiple attempts to access the Website using Plaintiff's
2 computer, Plaintiff has been denied the full use and enjoyment of the facilities,
3 goods and services offered by Defendants as a result of the accessibility
4 barriers.

5 20. Plaintiff personally encountered accessibility barriers and has actual
6 knowledge of them.

7 21. By failing to provide an accessible Website, the Defendants denied
8 Plaintiff full and equal access to the facilities privileges or advantages offered
9 to their customers.

10 22. Plaintiff has been deterred from returning to the Website as a result of
11 these prior experiences.

12 23. The failure to provide accessible facilities created difficulty and
13 discomfort for the Plaintiff.

14 24. If the Website had been constructed equally accessible to all individuals,
15 Plaintiff would have been able to navigate the Website and avail himself of its
16 goods and/or services.

17 25. Additionally, Plaintiff is a tester in this litigation and seeks future
18 compliance with all federal and state laws.

19 26. The barriers identified above violate easily accessible, well-established
20 industry standard guidelines for making digital content accessible to people
21 with hearing-impairments to access websites. Given the prevalence of
22 websites that have implemented these standards and created accessible digital
23 content, it is readily achievable to construct an accessible website without
24 undue burden on Russell Motorsports, Inc. or a fundamental alteration of the
25 purpose of its Website.

26 27. Compliance with W3C Web Content Accessibility Guidelines
27 ("WCAG") 2.0 AA standards is a viable remedy for these deficiencies and a
28 standard that has been adopted by California courts for website accessibility.

1 28. It's been established that failure to remove inaccessible website
2 conditions violates the ADA and California law and requiring compliance with
3 industry access standards is a remedy available to the Plaintiff.

4 29. The Website content was intentionally designed, and based on
5 information and belief, it is the Defendants' policy and practice to deny
6 Plaintiff access to the Website, and as a result, deny the goods and services that
7 are otherwise available to patrons of Russell Motorsports, Inc.

8 30. Subsequent to the filing of this action, and as of the date of filing of this
9 First Amended Complaint, Defendants have removed the above inaccessible
10 videos from their website.

11 31. Defendant has modified its Website to include the following statement
12 directly below the embedded videos Plaintiff initially encountered: "**Please**
13 **Note:** the videos included here are simply linked to the respective third party
14 entity. Placerville Speedway has no control over the captioning level and
15 quality of these videos. At the time they were posted, all videos had full
16 captioning. The videos are owned by the individual entities supplied in the
17 video. If you have questions regarding the videos, please contact them
18 directly."

19 32. On information and belief, Defendant has a practice of embedding
20 videos to its Website from other sources that do not consistently provide
21 captioning and are inaccessible. As a result of that practice, the barrier that
22 Plaintiff encountered is likely to recur.

23 33. On information and belief, Defendant does not have a policy or
24 procedure in place to ensure that the videos that it offers on its Website as a
25 privilege to its customers are accessible.

26 34. Due to the failure to construct and operate the Website in line with
27 industry standards, Plaintiff has been denied equal access to Defendant's Fair
28 and the various goods, services, privileges, opportunities and benefits offered

1 to the public by Russell Motorsports, Inc.

2 35. Closed captioning can be provided at little cost, sometimes free or mere
3 dollars per minute of video content.

4 36. Given the nature of the barriers and violations alleged herein, the
5 Plaintiff alleges, on information and belief, that there are other violations and
6 barriers on the Website that relate to his disability. In addition to the barriers
7 he personally encountered, Plaintiff intends to seek removal of all barriers on
8 the Website that relate to his disability. See *Doran v. 7-Eleven* (9th Cir. 2008)
9 524 F.3d 1034 (holding that once a plaintiff encounters one barrier, they can
10 sue to have all barriers that relate to their disability removed regardless of
11 whether they personally encountered the barrier).

12 37. Plaintiff will amend the complaint, to provide further notice regarding
13 the scope of the additional demanded remediation in the event additional
14 barriers are uncovered through discovery. However, please be on notice that
15 the plaintiff seeks to have all barriers related to his disability remedied.

16
17 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
18 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
19 Defendants.) (42 U.S.C. section 12101, et seq.)

20 38. Plaintiff re-pleads and incorporates by reference, as if fully set forth
21 again herein, the allegations contained in all prior paragraphs of this
22 complaint. Defendant is a public accommodation with the definition of Title
23 III of the ADA, 42 USC § 12181.

24 39. The Website provided by the Defendant is a service, privilege or
25 advantage and extension of Russell Motorsports, Inc. physical presence and
26 terrestrial services.

27 40. When a business provides services such as a website, it must provide an
28 accessible website.

1 41. Here, access to an accessible website was not provided and Defendants
2 have not instituted a policy or procedure to maintain their Website as
3 accessible. A failure to provide an accessible website is unlawful
4 discrimination against persons with disabilities.

5 42. Under the ADA, it is an act of discrimination to fail to ensure that the
6 privileges, advantages, accommodations, facilities, goods and services of any
7 place of public accommodation is offered on a full and equal basis by anyone
8 who owns, leases, or operates a place of public accommodation. *See*: 42 U.S.C.
9 § 12182(a). Discrimination is defined, inter alia, as follows: “A failure to make
10 reasonable modifications in policies, practices, or procedures, when such
11 modifications are necessary to afford goods, services, facilities, privileges,
12 advantages, or accommodations to individuals with disabilities, unless the
13 accommodation would work a fundamental alteration of those services and
14 facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).”

15 43. Here, the failure to ensure that the accessible facilities were available
16 and ready to be used by the plaintiff is a violation of the law.

17 44. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures and rights
18 set forth and incorporated therein, Plaintiff requests relief as set forth below.

19
20 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
21 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
22 Code § 51-53.)

23 45. Plaintiff repleads and incorporates by reference, as if fully set forth
24 again herein, the allegations contained in all prior paragraphs of this
25 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
26 that persons with disabilities are entitled to full and equal accommodations,
27 advantages, facilities, privileges, or services in all business establishment of
28 every kind whatsoever within the jurisdiction of the State of California. Cal.

1 Civ. Code §51(b).

2 46. The Unruh Act provides that a violation of the ADA is a violation of the
3 Unruh Act. *Cal. Civ. Code* § 51(f).

4 47. Defendants' acts and omissions, as herein alleged, have violated the
5 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
6 rights to full and equal use of the accommodations, advantages, facilities,
7 privileges, or services offered.

8 48. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
9 discomfort or embarrassment for the plaintiff, the defendants are also each
10 responsible for statutory damages, i.e., a civil penalty. *Cal. Civ. Code* §
11 55.56(a)-(c).

12 49. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures and rights
13 set forth and incorporated therein, Plaintiff requests relief as set forth below.
14

15 **PRAYER:**

16 Wherefore, Plaintiff prays that this Court award damages and provide
17 relief as follows:

18 1. A Declaratory Judgment that at the commencement of this action
19 Defendants were in violation of the requirements of the ADA due to
20 Defendants' failures to take action to ensure that its websites were fully
21 accessible to and independently usable by hearing-impaired individuals,
22 including providing closed-captioning on all video content containing audio
23 elements.

24 2. For equitable nominal damages for violation of civil rights. See
25 Uzuegbunam v. Preczewski, 141 S.Ct. 792 (2021) and any other equitable
26 relief the Court finds appropriate.

27 3. Pursuant to 42 U.S.C § 12181, a preliminary and permanent injunction
28 enjoining Defendants from violating the ADA with respect to its Website,

1 including a requirement that all current and future audio-video content be
2 closed captioned at the time of posting to its Website.

3 4. Damages under the Unruh Civil Rights Act § 51¹, which provides for
4 actual damages and a statutory minimum of \$4,000 for each offense.

5 5. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
6 to 42 U.S.C. § 12205; and *Cal. Civ. Code* § 52.

7
8
9 Dated: February 16, 2022 CENTER FOR DISABILITY ACCESS

10 By: ____/s/ Elliott Montgomery____

11 Elliott Montgomery, Esq.
12 Attorney for Plaintiff

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26 _____
27 ¹ Note: the plaintiff is not invoking section 55 of the California Civil Code and
28 is not seeking injunctive relief under the Disabled Persons Act at all.